

1 CATHERINE CORTEZ MASTO
Attorney General
2 MARTA A. ADAMS
Chief Deputy Attorney General
3 Nevada Bar No. 1564
Attorney General's Office
4 100 North Carson Street
Carson City, Nevada 89701-4717
5 Telephone: 775-684-1237
Facsimile: 775-684-1108
6 Attorneys for State of Nevada
Department of Wildlife
7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 WALKER RIVER PAIUTE TRIBE,

13 Plaintiff-Intervenor,

14 vs.

15 WALKER RIVER IRRIGATION DISTRICT,
A corporation, et al.,

16 Defendants.

17 -----
UNITED STATES OF AMERICA, WALKER
18 RIVER PAIUTE TRIBE,

19 Counterclaimants,

20 vs.

21 WALKER RIVER IRRIGATION DISTRICT,
et al.,

22 Counterdefendants.

CASE NO. 3:73-cv-127-ECR-RAM

IN EQUITY NO. C-125-B-ECR
SUBFILE NO. C-125-B

**NEVADA DEPARTMENT OF WILDLIFE'S
RESPONSE BRIEF ON THRESHOLD
ISSUES**

23 The Nevada Department of Wildlife (NDOW), through its counsel Catherine Cortez
24 Masto, Nevada Attorney General, and Chief Deputy Attorney General, Marta Adams, files this
25 brief in response to opening briefs filed in this case concerning threshold issues which should
26 be considered in this multi-tiered litigation. For purposes of its opening brief, NDOW
27 suggested that appropriate threshold issues (1) logically belong at the initial phase of the

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1 litigation following service; (2) are either purely legal issues or ones which require minimal
2 factual development and (3) will otherwise facilitate this Court's management of the case.

3 In its opening brief, NDOW suggested six threshold issues addressing jurisdiction, the
4 scope of the litigation, and certain equitable defenses consistent with those enumerated in the
5 Case Management Order (CMO). These issues present a means whereby the Court can
6 distill essential elements of the case and significantly reduce the unnecessary expenditure of
7 judicial and party resources needed for ultimate resolution of the litigation.

8 **THE CASE MANAGEMENT ORDER CONTEMPLATES CONSIDERATION OF**
9 **THRESHOLD ISSUES AFTER COMPLETION OF SERVICE.**

10 The CMO carefully lays out categories of water rights' holders and users subject to
11 service. In addition and relevant for purposes of determining appropriate threshold issues, the
12 CMO directs the Magistrate Judge to address threshold issues directed toward resolution of
13 the Tribal claims. In fact, the Tribal claims are to be addressed in Phase 1 following service of
14 process. CMO at 8. Only when service of process has been completed on designated
15 categories of water right holders and water users, the Magistrate Judge is directed to
16 "consider and make a preliminary determination of the threshold issues to be addressed at the
17 outset of the litigation on the U.S./Tribe counterclaims." CMO at 9.

18 The United States, the Walker River Paiute Tribe (Tribe) and Mineral County suggest
19 that among the threshold issues is the issue of completion of service of process. An
20 examination of the CMO shows that the Court actually contemplated completion of service
21 before it addresses threshold issues pertaining to the merits of the Tribal claims. Based on
22 the express direction from the Court, the threshold issues are intended to address the Tribal
23 claims themselves in order to focus the litigation and possibly resolve those issues capable of

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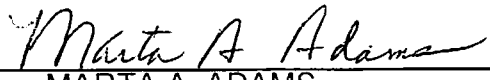
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1 resolution. To that end, NDOW respectfully submits that this Court's determination of
2 threshold issues should include those issues which go to the merits of the Tribal claims.

3 DATED this 10th day of October 2008.

4 CATHERINE CORTEZ MASTO
5 Attorney General

6 By: 
7 MARTA A. ADAMS
8 Nevada State Bar No. 1564
9 100 North Carson Street
10 Carson City, Nevada 89701-4717
11 (775) 684-1237
12 Attorneys for State of Nevada
13 Department of Wildlife
14
15
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26
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CERTIFICATE OF SERVICE

I declare that I am an employee of the State of Nevada and on this 10th day of October 2008, I served a copy of the foregoing **NEVADA DEPARTMENT OF WILDLIFE'S RESPONSE BRIEF ON THRESHOLD ISSUES**, by U.S. District Court CM/ECF Electronic filing to:

- **Linda Ackley**
lackley@water.ca.gov
- **Marta A. Adams**
MAdams@ag.nv.gov, cbrackley@ag.nv.gov
- **Gregory W. Addington**
greg.addington@usdoj.gov, judy.farmer@usdoj.gov, joanie.silvershield@usdoj.gov
- **George N. Benesch**
gbenesch@sbcglobal.net
- **Linda A. Bowman**
office@bowman.reno.nv.us, office@webmail.hotspotbroadband.com
- **T. Scott Brooke**
brooke@brooke-shaw.com, marianne@brooke-shaw.com
- **Brian Chally**
brian.chally@lvvwd.com
- **Gordon H. De Paoli**
gdepaoli@woodburnandwedge.com
- **William J Duffy**
william.duffy@dgslaw.com
- **Cheri K Emm-Smith**
districtattorney@mineralcountynv.org
- **Dale E Ferguson**
dferguson@woodburnandwedge.com, cmayhew@woodburnandwedge.com
- **Andrew D. Galvin**
drew.galvin@americantower.com
- **Noelle R Gentilli**
ngentill@water.ca.gov, esoderlu@water.ca.gov
- **Sylvia L. Harrison**
sharrison@mcdonaldcarano.com
- **Simeon M Herskovits**
simeon@communityandenvironment.net
- **John W Howard**
johnh@jwhowardattorneys.com, elisam@jwhowardattorneys.com

- 1 • **Michael D Hoy**
mhoy@nevadalaw.com, cstewart@nevadalaw.com, tchrissinger@nevadalaw.com, service@nevadalaw.com
- 2
- 3 • **Kirk C. Johnson**
kirk@nvlawyers.com, chris@nvlawyers.com
- 4 • **Debbie Leonard**
dshosteck@mcdonaldcarano.com, smelendez@mcdonaldcarano.com, pmiller@mcdonaldcarano.com
- 5
- 6 • **Michael F. Mackedon**
falonlaw@phonewave.net
- 7
- 8 • **Erin K.L. Mahaney**
emahaney@waterboards.ca.gov
- 9 • **Malissa Hathaway McKeith**
mckeith@lbbslaw.com
- 10 • **Michael R. Montero**
mrm@eloreno.com, lwatson@eloreno.com
- 11
- 12 • **Marvin W. Murphy**
marvinmurphy@sbcglobal.net
- 13 • **David L. Negri**
david.negri@usdoj.gov
- 14 • **Michael Neville**
michael.neville@doj.ca.gov, cory.marcelino@doj.ca.gov
- 15 • **Michael A. Pagni**
mpagni@mcdonaldcarano.com, dshosteck@mcdonaldcarano.com, spierallini@mcdonaldcarano.com
- 16 • **Karen A Peterson**
kpeterson@allisonmackenzie.com, nlillywhite@allisonmackenzie.com, voneill@allisonmackenzie.com
- 17 • **G. David Robertson**
gdavid@nvlawyers.com, kirk@nvlawyers.com, chris@nvlawyers.com
- 18 • **William E Schaeffer**
lander_lawyer@yahoo.com
- 19 • **John P Schlegelmilch**
jpslaw@netscape.com
- 20 • **Susan L. Schneider**
susan.schneider@usdoj.gov, christopher.watson@sol.doi.gov, yvonne.marsh@usdoj.gov, eileen.rutherford@usdoj.gov, catherine.wilson@sol.doi.gov
- 21 • **Laura A Schroeder**
counsel@water-law.com, Katherine@water-law.com, tau@water-law.com, c.moore@water-law.com
- 22 • **Stacey Simon**
ssimon@mono.ca.gov
- 23
- 24
- 25
- 26
- 27
- 28

- 1 • **Julian C Smith , Jr**
joylyn@smithandharmer.com
- 2 • **James Spoo**
spootoo@aol.com,jjrbau@hotmail.com
- 3 • **Lynn L Steyaert**
4 lls@water-law.com,tau@water-law.com,counsel@water-law.com
- 5 • **Bryan L Stockton**
bstockton@ag.nv.gov,sgeyer@ag.nv.gov
- 6 • **J. D. Sullivan**
7 jd@mindenlaw.com,joesullivan@mindenlaw.com,gkaufmann@mindenlaw.com,clint@
mindenlaw.com,attyjoesullivan@hotmail.com,gene_kaufmann@hotmail.com
- 8 • **Harry W Swainston**
9 hwsainston@earthlink.net
- 10 • **Louis S Test**
twallace@htag.reno.nv.us
- 11 • **Westfork**
kirk@nvlawyers.com
- 12 • **Wes Williams**
13 wwilliams@stanfordalumni.org
- 14 • **Charles S Zumpft**
zumpft@brooke-shaw.com
- 15 • **Ross E. de Lipkau**
16 RdeLipkau@parsonsbehle.com,LBagnall@parsonsbehle.com

17 I further declare that and on this 5th day of September 2008, I served a copy of the
18 foregoing **NEVADA DEPARTMENT OF WILDLIFE'S RESPONSE BRIEF ON THRESHOLD**
19 **ISSUES**, by mailing a true and correct copy thereof, properly addressed with postage prepaid,
20 to the following:

21 Manual Notice List

22
23 The following is the list of attorneys who are **not** on the list to receive e-mail notices for this
24 case (who therefore require manual noticing). You may wish to use your mouse to select and
25 copy this list into your word processing program in order to create notices or labels for these
26 recipients.

27 **Linda Ackley**
Department of Water Resources
28 1416 Ninth Street, Room 1104
Sacramento, CA 94236-0001

- 1 **Kelly R. Chase**
P.O. Box 2800
- 2 Minden, NV 89423-
- 3 **James T. Fousekis**
2848 Garber Street
- 4 Berkeley, CA 94705
- 5 **Susan Fousekis**
2848 Garber Street
- 6 Berkeley, CA 94705
- 7 **Daniel N. Frink**
California Water Resources Control Board
- 8 P.O. Box 100
Sacramento, CA 94814-
- 9 **Nathan Goedde**
California Department of Fish and Game
- 10 1416 9th Street Ste 1335
- 11 Sacramento, CA 95814
- 12 **Mary Hackenbracht**
California Attorney General's Office
- 13 1300 I Street, Suite 1101
PO Box 944255
- 14 Sacramento, CA 94244-2550
- 15 **Robert L. Hunter**
Western Nevada Agency
- 16 311 East Washington Street
Carson City, NV 78701-4065
- 17 **George M. Keele**
George M. Keele, APC
- 18 1692 Country Road
Suite A
- 19 Minden, NV 89423
- 20 **John Kramer**
Department of Water Resources
- 21 1416 Ninth Street
Sacramento, CA 95814
- 22 **Donald B. Mooney**
Law Offices of Donald B. Mooney
- 23 129 C Street
Suite 2
- 24 Davis, CA 95616
- 25 **David Moser**
McCutchen, Doyle, Brown, Et Al.
- 26 Three Embarcadero Center,
Suite 1800
- 27 San Francisco, CA 94111
- 28 ///

1 Ragan, Leslie and Steven

2 Mary Rosaschi
3 P.O. Box 22
Wellington, NV 89444


4 Stephen B Rye
5 Lyon Count District Attorney
31 South Main Street
6 Yerington, NV 89447

7 William J Shaw
8 Brooke & Shaw, Ltd.
1590 Fourth Street
9 P.O. Box 2860
Minden, NV 89423-

10 Gary A Sheerin
11 Gary A. Sheerin, Law Office of
177 W Proctor Street
Suite B
12 Carson City, NV 89703

13 Garry Stone
14 Water Master
290 South Arlington Ave
Reno, NV 89501

15 Walker Lake Water Dist. G.I.D.
16 175 Wassuk Way
Walker Lake, NV 89415

17 
18 _____
19 Employee of the State of Nevada
20 Office of the Attorney General
21
22
23
24
25
26
27